

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REBECCA IRENE FISHERIES, LLC,

Plaintiffs,

v.

CARLOS M. GUTIERREZ, *et al.*,

Defendants.

Case No. C05-0891L

ORDER GRANTING PLAINTIFF'S
MOTION TO SUPPLEMENT THE
ADMINISTRATIVE RECORD

This matter comes before the Court on plaintiff's "Motion to Supplement Record on Review and/or to Remand to Agency for Additional Evidentiary Proceeding." Dkt. # 13. Plaintiff argues that the penalties imposed by the Secretary of Commerce were based on perjured testimony and seeks to supplement the administrative record with evidence of the alleged perjury.

The general rule is that judicial review of an agency decision is limited to the record that was before the agency at the time it made its decision. See, e.g., Higbee v. Sullivan, 975 F.2d 558, 561-62 (9th Cir. 1992). In some instances, however, a determination regarding the fairness of the administrative proceeding requires the consideration of extra-record evidence. See, e.g., Hummel v. Heckler, 736 F.2d 91 (3d Cir. 1984); Dawson v. Bowen, 136 F.R.D. 618 (S.D. Ohio 1988). Because Steve Haggard recanted his testimony after the Administrative Law Judge ("ALJ") had issued his ruling, plaintiff's allegations of perjury could not have been

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1 considered during the administrative process and raise the possibility that the administrative
2 decision was based on false evidence. The Court has therefore considered the extra-record
3 evidence submitted by plaintiff, namely the Sworn Statement of Steve Haggard (dated 8/24/05),
4 for the purpose of evaluating the fairness of the administrative proceeding. Hummel, 736 F.2d
5 at 94-95.¹

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7 For all of the foregoing reasons, plaintiff's motion to supplement the
8 administrative record is GRANTED. The Court has considered the Sworn Statement of Steve
9 Haggard (dated 8/24/05) in the context of the parties' cross-motions for summary judgment.

10 DATED this 5th day of January, 2006.

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13 Robert S. Lasnik
14 United States District Judge
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23 ¹ As discussed more fully in the "Order Remanding Matter to Secretary of Commerce" (of even
24 date), consideration of Mr. Haggard's new testimony does not affect the outcome of this case. The
25 Court finds that the ALJ did not credit Mr. Haggard's original testimony regarding the extent of
26 presorting, that the alleged perjury did not affect the administrative decision, and that the extra-record
evidence does not show or even raise an inference that the administrative process or the ALJ's decision
was unfair, arbitrary, or capricious.

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